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In the Supreme Court of the United States

OCTOBER TERM, 1973

No.

UNITED STATES OF AMERICA, APPELLANT

v.

AMERICAN FRIENDS SERVICE COMMITTEE, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JURISDICTIONAL STATEMENT

OPINION BELOW

The findings of fact and conclusions of law of the district court (Appendix A, *infra*, pp. 1a-23a) are reported at 368 F. Supp. 1176.

JURISDICTION

The findings of fact, conclusions of law, and order (Appendix B, *infra*, p. 24a) of the district court were entered on December 31, 1973. The notice of appeal to this Court (Appendix C, *infra*, p. 25a) was filed on January 30, 1974. By order dated March

21, 1974, Mr. Justice Brennan extended the time for docketing the appeal to May 30, 1974.

The district court held that Section 3402 of the Internal Revenue Code of 1954 is unconstitutional as applied to the facts of this case. The jurisdiction of this Court is conferred by 28 U.S.C. 1252, which authorizes a direct appeal to this Court from a final judgment of any court of the United States holding an Act of Congress unconstitutional in any civil action to which the United States is a party. Such an appeal lies where a federal statute is held unconstitutional as applied to particular circumstances. *Fleming* v. *Rhodes*, 331 U.S. 100, 102-103; *United States* v. *Christian Echoes Ministry*, 404 U.S. 561, 563.

QUESTIONS PRESENTED

1. Whether Section 3402 of the Code, requiring employers to deduct and withhold from wages federal income taxes, violates the First Amendment right of free exercise of religion of appellee's employees who on religious grounds, object to the withholding of 51.6 percent of their taxes, representing their estimate of the portion of the federal budget allocated to military expenditures.

2. Whether the Anti-Injunction Act, 26 U.S.C. 7421(a), barred the district court from restraining the United States from collecting federal income taxes by means of the withholding method prescribed by Section 3402 of the Internal Revenue Code.

STATUTES INVOLVED

Internal Revenue Code of 1954 (26 U.S.C.):

SEC. 3402. INCOME TAX COLLECTED AT SOURCE.

(a) [as amended by Sec. 101(a), Tax Adjustment Act of 1966, P.L. 89-368, 80 Stat. 38] *Requirement of Withholding.*—Every employer making payment of wages shall deduct and withhold upon such wages (except as otherwise provided in this section) a tax determined in accordance with the following tables. For purposes of applying such tables, the term "the amount of wages" means the amount by which the wages exceed the number of withholding exemptions claimed, multiplied by the amount of one such exemption as shown in the table in subsection (b)(1):

* * * * *

SEC. 7421. PROHIBITION OF SUITS TO RESTRAIN ASSESSMENT OR COLLECTION.

(a) [as amended by Sec. 110(c), Federal Tax Lien Act of 1966, P.L. 89-719, 80 Stat. 1125] *Tax.*—Except as provided in sections 6212 (a) and (c), 6213(a), and 7426(a) and (b)(1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

* * * * *

STATEMENT

Appellee American Friends Service Committee ("Committee") is a corporation organized in 1917 to

provide employment for conscientious objectors. Since its founding, it has expanded its operations into other religious, charitable, social, philanthropic and relief work in the United States and in various foreign countries. It employs a paid staff of approximately 450 to 500 persons, many of whom are members of the Religious Society of Friends, or Quakers, and are conscientiously opposed to participation in war in any form (Appendix A, *infra*, pp. 1a-2a).

Appellees Lorraine Cleveland and Leonard Cadwallader are both members of the Religious Society of Friends. Cleveland has been a pacifist since 1930 and has been employed by the Committee since 1944. As part of her religious beliefs, Cleveland is conscientiously opposed to participation in war in any form and objects to the voluntary payment of taxes which are used for military purposes. Cadwallader was employed by the Committee as Director of Youth Programs during 1969-1971. Prior to that time, he was recognized by the Selective Service System as a conscientious objector and was permitted to perform alternative civilian service in lieu of induction into the military. Like Cleveland, during the years in issue, he objected to the voluntary payment of taxes used for military purposes (Appendix A, *infra*, pp. 2a-3a).[1]

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[1] Despite his objection during his employment with the Committee to the voluntary payment of taxes to be used for military expenditures, Cadwallader testified at trial that after leaving the Committee, he did not object to the withholding of taxes from his salary by a subsequent employer.

During the latter part of the 1960's, some of the Committee's employees and contributors became concerned that the Committee's withholding of federal income taxes from the wages of its employees prevented, as they saw it, the free expression of religious beliefs by those employees who opposed the voluntary payment of the portion of their taxes which was to be used for military purposes. Several employees threatened to resign over this or related issues, and at least one employee did resign.[2] However, he was easily replaced from among a large number of applicants for employment. Cadwallader resigned from the Committee in 1971, but his reasons for leaving were wholly unrelated to his belief that the withholding of income taxes from his wages was suppressing the free expression of his religious convictions. Cleveland is still employed by the Committee, and has disavowed any intention to resign even if the Committee is required to withhold taxes from her wages (Appendix A, *infra*, pp. 4a-5a).

Moreover, he has no objection to filing estimated tax returns for income earned since he became self-employed (Tr. 294-295, 298-299). "Tr." references are to the transcript of proceedings in the district court, a copy of which we have lodged with the Clerk of this Court.

[2] The employee who resigned testified that the final event which precipitated his resignation was the Committee's decision to honor an Internal Revenue Service levy on his salary for unpaid federal telephone excise taxes. He indicated that he "perhaps" would have reconsidered his decision to resign if the Committee had not been obligated to withhold taxes on his salary (Tr. 309-310).

In 1969, five of the Committee's employees, including Cleveland and Cadwallader, requested that it discontinue withholding from their salaries a certain percentage of federal income taxes that it was otherwise obligated to collect under Section 3402 of the Internal Revenue Code. The Committee honored these requests and ceased withholding a portion of the taxes during the final quarter of 1969. In ascertaining the portion of the total taxes that was not to be withheld, the five employees and the Committee relied upon a statement made in a publication of the Friends Committee on National Legislation that approximately 51.6 percent of the federal tax revenues was spent for military purposes during 1968. In accordance with the employees' request, the Committee did not withhold $574.09 from their wages for the final quarter of 1969 (Appendix A, *infra*, pp. 5a-6a).

Although the Committee refrained from withholding the $574.09, it nevertheless remitted that amount to the Internal Revenue Service on February 10, 1970. Two days later, the Committee filed a claim for refund of the amount paid over, on the basis of the religious and conscientious position of itself and its employees. The Regional Director of the Service denied the claimed refund claim (Appendix A, *infra*, p. 6a).

Appellees thereupon initiated the present action for injunctive relief in the United States District Court for the Eastern District of Pennsylvania, challenging the constitutionality of Section 3402 of the Code. The district court denied the government's motion

to dismiss the complaint for lack of jurisdiction under the Anti-Injunction Act; that Act prohibits suits "for the purpose of restraining the assessement or collection of any tax." It went on to hold that Section 3402 is unconstitutional as applied in this case because it operates as an abridgment to the free exercise of the religion of appellees Cleveland and Cadwallader (Appendix A, *infra*, pp. 9a-23a). The court thereupon enjoined the United States from requiring the withholding of 51.6 percent of the income taxes of Cleveland and Cadwallader required by Section 3402 to be withheld from their wages. The court also ordered the Committee to cease withholding a similar percentage of the taxes of these two employees (Appendix B, *infra*, p. 24a).[2]

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[2] The district court further entered judgment in favor of the Committee against the United States for $574.09 (Appendix B, *infra*, p. 24a). We do not appeal from that aspect of the decision. Although the Committee did not allege in either its claim for refund or pleadings in the district court that all federal income taxes due from its five employees had been collected by the Internal Revenue Service through summary collection proceedings, the district court found as a fact that all taxes had been paid by the employees, and that the government had twice collected the amount of taxes to which it was entitled (Appendix A, *infra*, pp. 6a-7a). We are advised by the Internal Revenue Service that it has collected by levy the income taxes for the year 1969 due from the five employees and not withheld by the Committee. Accordingly, even though the $574.09 paid by the Committee from its own funds was not an "overpayment" when paid within the meaning of Section 6414 of the Code, we do not challenge the district court's determination that a refund of $574.09 was payable to the Committee. Cf. *Eighth Street Baptist Church, Inc.* v. *United States*, 431 F.2d 1193 (C.A. 10).

THE QUESTIONS ARE SUBSTANTIAL

1. In holding that Section 3402 of the Internal Revenue Code is unconstitutional as applied to the facts of this case, the decision below seriously threatens the government's ability promptly and efficiently to collect revenues which appellees concede to be lawfully due. By enjoining the use of the withholding method with respect to a portion of the tax liability of appellees, the district court has erroneously nullified an Act of Congress designed to insure the current payment of income taxes upon wages. The importance of this method of collection is shown by the fact that withholding taxes on wages recently accounted for 78.4 percent of the total amount of individual income tax collections.[4] Since the decision below calls into question this vital method of tax collection from wages to the extent that the wage earner objects, as a matter of conscience, to particular government expenditures, it will doubtless have a significant impact upon the revenue. It will also undoubtedly engender a substantial volume of litigation. Plenary review by this Court is therefore necessary in order to resolve this constitutional challenge to the withholding tax system established by Congress.

The district court's decision that Section 3402 is unconstitutional as applied to the facts of this case is erroneous. In the court's view, "the withholding method of collection of taxes does foreclose [appel-

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[4] *Annual Report of the Commissioner of Internal Revenue*, p. 27 (1973).

lees'] ability to freely exercise that part of their beliefs requiring them to refuse to participate in war in any form with respect to the payment of war taxes" (Appendix A, *infra*, p. 17a). Such a conclusion, we submit, cannot be squared with this Court's decisions construing the Free Exercise Clause of the First Amendment. Appellees' religious beliefs cannot insulate them from the withholding of income taxes from their wages.

In *Sherbert* v. *Verner*, 374 U.S. 398, 402-403, this Court described the parameters of the Free Exercise Clause as follows:

> The door of the Free Exercise Clause stands tightly closed against any governmental regulation of religious *beliefs* as such, *Cantwell* v. *Connecticut*, 310 U.S. 296, 303. Government may neither compel affirmation of a repugnant belief, *Torcaso* v. *Watkins*, 367 U.S. 488; nor penalize or discriminate against individuals or groups because they hold religious views abhorrent to the authorities, *Fowler* v. *Rhode Island*, 345 U.S. 67; nor employ the taxing power to inhibit the dissemination of particular religious views, *Murdock* v. *Pennsylvania*, 319 U.S. 105; *Follett* v. *McCormick*, 321 U.S. 573; cf. *Grosjean* v. *American Press Co.*, 297 U.S. 233. On the other hand, the Court has rejected challenges under the Free Exercise Clause to governmental regulation of certain overt acts prompted by religious beliefs or principles, for "even when the action is in accord with one's religious convictions, [it] is not totally free from legislative restrictions." *Braunfeld* v. *Brown*, 366 U.S. 599,

603. The conduct or actions so regulated have invariably posed some substantial threat to public safety, peace or order. See, *e.g.*, *Reynolds* v. *United States*, 98 U.S. 145; *Jacobson* v. *Massachusetts*, 197 U.S. 11; *Prince* v. *Massachusetts*, 321 U.S. 158; *Cleveland* v. *United States*, 329 U.S. 14.

Although the above enumeration of the restraints upon government action may not be exhaustive, it demonstrates the limits of the Free Exercise Clause. That clause prevents inhibition of activities because of belief, and precludes attempts to compel affirmation of a repugnant belief. Thus, "it is necessary in a free exercise case for one to show the coercive effect of the enactment as it operates against him in the practice of his religion." *Abington School Dist.* v. *Schempp*, 374 U.S. 203, 223. See also *Board of Education* v. *Allen*, 392 U.S. 236, 242-243. And in this connection, the Court has observed that a generally imposed income tax cannot rationally have a coercive effect on religious practices or beliefs. *Follett* v. *McCormick*, 321 U.S. 573, 577-578; *Murdock* v. *Pennsylvania*, 319 U.S. 105, 112.

Contrary to the conclusion of the district court, the application of the withholding tax to appellees' wages is in no way concerned with their "religious beliefs as such." Nor does it deny to them the right to continue to hold and promote any of their beliefs. Compare *Board of Education* v. *Barnette*, 319 U.S. 624. Rather, the process of current collection of taxes by means of the withholding method prescribed by

Section 3402 is entirely neutral and unrelated to religion. That provision requires every employer making payment of wages to deduct and withhold a tax on those wages. The system for the current payment of individual income taxes now provided in Section 3402 was originally enacted in 1943 to remedy inequities caused by increased federal income tax rates. The legislative history indicates that the purpose of the measure was to alleviate the hardship placed upon the wage earner in meeting his taxes and to assist the government in securing needed revenues. H. Rep. No. 268, 78th Cong., 1st Sess., pp. 1-2; S. Rep. No. 221, 78th Cong., 1st Sess., p. 1.

As a collection mechanism for the income tax, there is no question that Section 3402 was enacted pursuant to the authority granted to Congress by the Sixteenth Amendment. The withholding tax system operates to advance the government's valid secular goals and does not interfere with any religious ritual or practice or work a penalty against any theological position. Cf. *Gillette* v. *United States*, 401 U.S. 437, 461-462. To be sure, the Court reaffirmed in *Sherbert* v. *Verner*, *supra*, 374 U.S. at 406, that the sensitivity of the Free Exercise Clause requires that " '[o]nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation.' " But the competing interests here are paramount since the interference with the collection of income taxes countenanced by the district court could dangerously impair or even destroy the ability of the government to function.

If the Internal Revenue Service were compelled to collect taxes by levy from every person who objected to tax collection by withholding because of disapproval on religious grounds of particular governmental expenditures, the revenue collection resources of the Service would be severely strained.[5] Cf. *Autenrieth* v. *Cullen*, 418 F.2d 586, 588 (C.A. 9), certiorari denied, 397 U.S. 1036; *Muste* v. *Commissioner*, 35 T.C. 913. The Free Exercise Clause has never been construed to interfere with such a fundamental societal activity as the collection of taxes. As this Court observed in *Gillette* v. *United States*, *supra*, 401 U.S. at 461, in terms most appropriate to appellees' claim, "[o]ur cases do not at their farthest reach support the proposition that a stance of conscientious opposition relieves an objector from any

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[5] Cleveland's and Cadwallader's objection to the withholding of taxes as an interference with protected religious rights is in stark contrast with their concession that the taxes may be collected by levies on their assets. Their objection to one means of collection and acceptance of the other apparently springs from their erroneous belief that the former method is a voluntary exaction of taxes, while the latter is involuntary. But Section 3402 requires every employer under force of law to deduct and withhold taxes on its employees' wages. Nothing in the statute can be interpreted as creating a voluntary collection system that can be accepted or rejected at will. In attempting to establish their right to force the government to proceed by levy, they seek an occasion for a direct confrontation with the government upon which they may make explicit their refusal to pay voluntarily that part of their taxes which they assert will be devoted to military uses.

colliding duty fixed by a democratic government."[6] Surely the obligation to pay concededly valid income taxes pursuant to the prescribed method of collection imposes a duty.

2. Apart from its erroneous holding that Section 3402 of the Code is unconstitutional as applied to the facts of this case, the district court mistakenly concluded that it had jurisdiction to consider appellees' claim for injunctive relief. In addition to the fact that the United States has not consented to this

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[6] The district court's reliance (Appendix A, *infra*, pp. 14a, 17a, 19a-20a) upon *Sherbert* v. *Verner*, *supra*, and *Wisconsin* v. *Yoder*, 406 U.S. 205, is misplaced. In both of those cases, the state interest in regulating the activity at issue was far less compelling than the need to raise revenues necessary for the very survival of the governmental structure. In *Snerbert*, the Court held that disqualification of a Seventh-Day Adventist from unemployment compensation solely because of her refusal to accept employment in which she would have to work on Saturday violated the Free Exercise Clause. The Court rejected the claimed state interest that false religious objections would dilute the unemployment compensation fund and necessary Saturday work would be hindered on the ground that "there [was] no proof whatever to warrant such fears of malingering or deceit * * *" (374 U.S. at 407).

Similarly, in *Wisconsin* v. *Yoder*, *supra*, the Court sustained the claims of the Amish that enforcement of a state compulsory formal education requirement after the eighth grade would violate the free exercise of their religion. The interest of the state in requiring an additional one or two years of formal high school attendance was deemed insufficient as against the claim that such additional schooling "would gravely endanger if not destroy the free exercise of [the Amish] religious beliefs" (406 U.S. at 219).

suit for an injunction against it,[7] this action is specifically barred by the federal Anti-Injunction Act, 26 U.S.C. 7421(a). With exceptions not here relevant, that statute, which this Court recently observed in *Bob Jones University* v. *Simon*, No. 72-1470, decided May 15, 1974 (slip op. 10-11) "could scarcely be more explicit," provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed." As the Court explained in *Bob Jones University* v. *Simon*, *supra* (slip op. at 11), "the principal purpose of this language * * * [is] the protection of the Government's need to assess and collect taxes as expeditiously as possible with a minimum of pre-enforcement judicial interference * * *." See also *Enochs* v. *Williams Packing Co.*, 370 U.S. 1, 7;[8] *State Railroad Tax*

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[7] The doctrine of sovereign immunity provides a jurisdictional bar to appellees' suit. See *United States* v. *Sherwood*, 312 U.S. 584, 586. Whether or not appellees could seek relief against an individual officer of the United States (see *Larson* v. *Domestic & Foreign Corp.*, 337 U.S. 683, 690; *Dugan* v. *Rank*, 372 U.S. 609, 621-622), the action against the United States should have been dismissed as an unconsented suit. *Jules Hairstylists of Md.* v. *United States*, 268 F. Supp. 511, 513-514 (D. Md.), affirmed *per curiam*, 389 F.2d 389 (C.A. 4), certiorari denied, 391 U.S. 934; *Matya* v. *United States*, 478 F.2d 330 (C.A. 8); *Buck* v. *United States*, 466 F.2d 481 (C.A. 10).

[8] In *Enochs* v. *Williams Packing Co.*, 370 U.S. 1, the Court created a narrow exception to the otherwise broad restriction against injunctive relief in federal tax cases. There, the Court unanimously held that a taxpayer seeking an injunc-

Cases, 92 U.S. 575, 613-614. Thus, the Act protects the collection of the revenue by limiting all judicial review of tax collection activities to the two methods authorized by Congress, refund suits (28 U.S.C. 1346 (a)(1)) or deficiency proceedings in the Tax Court (Sections 6212 and 6213 of the Code).

Section 3402(a) requires every employer making payment of wages to "deduct and withhold upon such wages * * * a tax" determined under appropriate tables. Once withheld, the taxes must be deposited by the employer in a government depositary within a specified period of time. See Section 6302 of the Code; Treasury Regulations, § 31.6302(c)-1. Since the withholding system is a method for the collection of income taxes upon wages, the order of the district court enjoining the United States from collecting 51.6 percent of the federal income taxes of Cleveland and Cadwallader by use of the withholding method was an injunction against "the * * * collection of any

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tion against the collection of taxes must satisfy a two-fold test. First, he had to demonstrate that under no circumstances could the government prevail on the merits of its claim. Secondly, he must show that collection of the tax will result in an irreparable injury for which there is no adequate legal remedy. In *Bob Jones University* v. *Simon*, *supra*, the Court reaffirmed *Williams Packing* as the "capstone to judicial construction of the [Anti-Injunction] Act" (slip op. at 16). See also *Commissioner* v. *"Americans United" Inc.*, No. 72-1371, decided May 15, 1974 (slip op. 5). Since, as the district court noted (Appendix A, *infra*, p. 12a), appellees Cleveland and Cadwallader do not challenge the government's right to collect the full taxes due on their income, they cannot meet the two-part test of *Williams Packing*.

tax," which is flatly prohibited by the Anti-Injunction Act.

Indeed, the district court acknowledged as much in its characterization of this suit as an objection "to one of several means of collection of a certain portion of [appellees'] federal income taxes" (Appendix A, *infra*, p. 12a). It concluded, however, that the statutory bar against injunctions did not apply because appellees "are not contesting the validity of the tax itself or the use to which the tax is put, and they are not seeking a refund of any tax alleged to be due to them" (*ibid.*). But such considerations are irrelevant in determining the applicability of the Anti-Injunction Act, the terms of which have been accorded "literal force" by this Court's decisions. See *Bob Jones University* v. *Simon*, *supra* (slip op. at 16-20). Nothing in either the language of the Anti-Injunction Act or in this Court's decisions suggests that this suit is beyond the reach of the statute simply because the validity of the tax itself is not being challenged. The fact that appellees' challenge is constitutional does not justify an exception to the bar of the Anti-Injunction Act. More than 50 years ago in *Bailey* v. *George*, 259 U.S. 16, the Court refused to enjoin the collection of a child labor tax as a regulatory measure beyond the taxing power of Congress.

Significantly, the Court rejected the taxpayer's claim for equitable relief on the same day that it struck down the tax as unconstitutional in a tax refund suit. *Bailey* v. *Drexel Furniture Co.*, 259 U.S. 20. See *Bob Jones University* v. *Simon*, *supra* (slip op. at 14-15); *Commissioner* v. *"Americans United" Inc.*, *supra* (slip op. at 7). The district court accordingly had no jurisdiction to entertain appellees' claim for injunctive relief against the application of the withholding tax collection system.[9]

[9] Indeed, to the extent that appellees' challenge may be deemed to be directed against the validity of the governmental expenditures for military activities, they are without the requisite standing to sue. They have not shown, much less alleged, that such expenditures exceed "specific constitutional limitations imposed upon the exercise of the congressional taxing and spending power * * *." Cf. *Flast* v. *Cohen*, 392 U.S. 83, 102-103. See also *Pietsch* v. *President of United States*, 434 F.2d 861, 863 (C.A. 2); *Kalish* v. *United States*, 411 F.2d 606, 607 (C.A. 9), certiorari denied, 396 U.S. 835; *Kent* v. *United States and the Northern California Regional Office of the American Friends Service Committee*, C.A. 9, Nos. 72-1093, 72-1094, decided May 10, 1974.

CONCLUSION

Probable jurisdiction should be noted.

Respectfully submitted.

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MAY 1974.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF PENNSYLVANIA

Civil Action No. 70-1405

AMERICAN FRIENDS SERVICE COMMITTEE, LORRAINE CLEVELAND and LEONARD CADWALLADER, PLAINTIFFS

v.

THE UNITED STATES OF AMERICA, DEFENDANT

FINDINGS OF FACT

NEWCOMER, J. December 31, 1973

Pursuant to Federal Rule of Civil Procedure 52 (a) the Court makes the following Findings of Fact and Conclusions of Law.

1. The American Friends Service Committee (hereinafter AFSC), is a religious corporation which was founded in 1917, with the original purpose of performing war relief work in World War I; it was intended to provide employment for conscientious objectors to war who were to perform alternative civilian service. Throughout its history since that time, although its operations are much expanded, the AFSC has continued to work in the same vein, engaging in religious, charitable, social, philanthropic and relief work throughout the United States and in foreign countries. The corporation is governed by a board of directors consisting of forty members of the Religious

Society of Friends, or Quakers, and it employs a paid staff of 450 to 500 persons, as well as several thousand volunteer workers. Because of the nature and goals of AFSC, a large proportion of its employees—approximately a third—are members of the Religious Society of Friends; a large proportion, by reason of religious training and belief, are conscientiously opposed to participation in war in any form; and among the male employees, many have been recognized by the Selective Service System as conscientious objectors. Because of its nature and goals, and because of the character of the men and women who are drawn to work for it, the AFSC as a body is almost unique in its corporate concern with matters of war and peace and with matters affecting the consciences of its employees.

2. Plaintiff Lorraine Cleveland is an employee of the AFSC, and with occasional interruptions, has worked for the AFSC continuously since October 1944; she has held a wide variety of positions, and presently is Director of the Africa and Middle East Programs in the AFSC's International Service Division. She has been a member of the Religious Society of Friends since 1947. Her late husband, who also spent much of his working life as an employee of Quaker organizations, was a duly recognized conscientious objector during World War II, who performed authorized civilian alternative service in a civilian public service camp. Mrs. Cleveland has been a pacifist since 1930, and because of her deeply held religious beliefs, she is conscientiously opposed to par-

ticipation in war in any form. As a part of this religious and conscientious objection to war, it is contrary to her religious principles to contribute to the waging of war through the voluntary payment of taxes which are put to that purpose.

3. The individual plaintiff Leonard Cadwallader began employment with the AFSC in the autumn of 1969, and held a position as the Director of Youth Programs until he resigned from the Service Committee in the autumn of 1971. He is a "birthright" Quaker, having been born in a Quaker family, and having been a member of the Religious Society of Friends throughout his life. Mr. Cadwallader has been conscientiously opposed to participation in war in any form throughout his life; he was recognized as a conscientious objector by the Selective Service System, and was permitted to perform alternative civilian service in lieu of induction into the military. In 1969, Mr. Cadwallader, like Mrs. Cleveland, had come to the conclusion that his religious opposition to war extended to a conscientious duty not to pay voluntarily those taxes which were used to finance war and military activities.

4. Dr. Edwin Bronner is an expert on the history of Quakerism in the United States.

5. Dr. Bronner's deposition testimony establishes that, although there is no formal creed or dogma in Quakerism, it has been true throughout the history of the Religious Society of Friends, since its beginnings in the seventeenth century, that most Quakers have considered it an integral part of their faith to

bear witness to the beliefs which they hold. It has always been the prevailing view that simple preaching of one's beliefs is not sufficient, and that one's actions must accord with and give expression to one's beliefs. Many of the employees of the AFSC, including particularly the individual plaintiffs Cleveland and Cadwallader, share in this belief, and for these employees, the operation of the withholding tax, which leaves them no option as to the payment of the taxes which they conscientiously question, operates as a direct abridgment of the expression and implementation of deeply cherished religious beliefs.

6. During the decade of the 1960's, and especially in the latter part of that period, the AFSC began to face increasing difficulty as a result of its acts as an employer, in performing its statutory duty of withholding federal income taxes from the salaries of its employees. As ever larger numbers of its employees came to believe that they could not, in good conscience, voluntarily pay taxes in support of war, both employees and contributors became more concerned with the AFSC's continued withholding of employee taxes, and the consequent frustration of the employees' expression of their religious beliefs. Many employees, including the individual plaintiffs in this action, questioned whether they could continue their employment with AFSC if it did not cease withholding their taxes. Several employees directly threatened to resign over this or related issues, and at least one employee, Thomas Flower, actually did resign over war tax issues.

7. One of the 300 or so regular employees of AFSC was shown to have resigned in protest over what he considered to be AFSC's failure to take more vigorous action to stop withholding taxes alleged to be used for military purposes. However, that employee was replaced from among a large number of applicants for employment.

8. The plaintiff, Leonard Cadwallader, has resigned from AFSC for reasons unrelated to the withholding tax issue and plaintiff, Lorraine Cleveland, disavows any intention to resign even if AFSC is required to withhold the taxes to which she objects.

9. By letter to Bronson Clark, the Executive Secretary of AFSC, the individual plaintiffs Cleveland and Cadwallader, on December 16 and December 15, 1969, respectively, formally requested that the AFSC discontinue withholding from their salaries the proportions of their federal taxes which were allocated for military and war purposes. Mrs. Cleveland, relying upon the December 1968 issue of the "Washington Newsletter" of the Friends Committee on National Legislation (hereinafter "FCNL"), specifically requested that 51.6% of her taxes not be withheld; Mr. Cadwallader mentioned no specific figure, but understood that if the AFSC honored his request, it would use the FCNL figure. The AFSC honored these requests, as well as similar requests from other, similarly situated employees, and ceased withholding from those employees 51.6% of the federal taxes which itwas otherwise obligated ot withhold.

10. Although the amounts in question were not withheld from the respective employees' salaries, the

AFSC nevertheless paid equivalent amounts from its own treasury over to the Internal Revenue Service, in an effort to have the maximum compliance possible with the law, consistent with the demands of conscience, and in order to avoid the invocation of criminal penalties against its officers. It was stipuated before trial that a payment of $574.09 was remitted on February 10, 1970, representing such payments for five employees, including the individual plaintiffs, for the final quarter of 1969. It was also stipulated that on February 12, 1970, the AFSC submitted to the Internal Revenue Service a claim for refund for the amount in question, explaining the religious and conscientious position of itself and its employees. On March 5, 1970, a letter was directed to the AFSC by Earl L. Torgerson, Director of the Internal Revenue Service, Mid-Atlantic Region, denying the claimed refund. The AFSC therefore was compelled to make a double payment of the amounts in question, first to its employees, and then to the Internal Revenue Service.

11. Both individual plaintiffs, Mrs. Cleveland and Mr. Cadwallader, filed on or before April 15, 1971, the statutory deadline, individual income tax returns for the tax year 1970, showing in full the wages which they had earned, and the amounts which had not been withheld by their employer. Both enclosed letters in which they stated their refusal to pay voluntarily the tax involved, and informed the Internal Revenue Service of their religious and conscientious reasons for such refusal.

12. The Internal Revenue Service, by means of levies against the assets of both individual plaintiffs, subsequently collected the full amount of taxes due and owing from each of them, and collected as well interest at the rate of 6% per year, and a penalty at the rate of ½ of 1% per month.

13. The AFSC has continued not to withhold the disputed amount of tax on the wages of the two individual plaintiffs, continuing to the date of trial in the case of Lorraine Cleveland, and to the time of his resignation for Leonard Cadwallader. In all cases, both individual plaintiffs have reported on their tax returns all wages earned, and all taxes due and not withheld, and in all such cases, the Internal Revenue Service has collected the amount of taxes not paid voluntarily, together with 6% annual interest and a penalty at the rate of ½ of 1% per month.

14. The failure of the AFSC to withhold the taxes in question from the wages of the individual plaintiffs, and the consequent use by the government of levies to collect these taxes, has caused some additional difficulty or expense in collection. The issuance and service of a notice of levy is a regular and routine operation for the Internal Revenue Service, and both the AFSC and the banks to which the Internal Revenue Service has looked for collection have honored the levies which have been served on them.

15. The 6% annual interest rate and the ½ of 1% per month penalty are calculated at a rate to place the taxpayer in the same position as those who voluntarily pay their taxes at the required times and

to reimburse the government for any collection costs which it might incur in resorting to the levy process.

16. However, the above 6% interest rate and penalty set forth in finding No. 15 above would not reimburse the government for collection costs which would result from use of the levy process in cases where small amounts of money are due the Internal Revenue Service.

17. The AFSC's cessation of withholding of the proportion of taxes involved has substantially eased the burden on the consciences of the employees thereby affected; it has permitted them to face their government directly over the issue of whether they will pay voluntarily those of their taxes which are put to military and war purposes, and thereby permitted them to bear witness to their beliefs as their most deeply held religious convictions require them to do.

18. The cessation of withholding by the AFSC has likewise substantially relieved the earlier pressures on AFSC from its other employees and contributors, who were concerned with AFSC's role in the involuntary collection of war taxes from its employees; it has likewise reduced the burden of conscience borne by the AFSC itself as an organization in interfering with the expression of the religious and conscientious beliefs of its employees.

19. The figure of 51.6% as the proportion of the federal budget expended for military and war purposes is based on a computation by the Friends Committee on National Legislation of actual appropriations made by the Congress in the calendar year

1968. The computation and analysis is set forth in detail, with accompanying tables and charts, in the December, 1968, issue of the FCNL "Washington Newsletter." Miss Frances Neely, legislative secretary of FCNL, testified on the research and statistical analysis which is annually performed by FCNL researchers, and which was performed for the calendar year 1968, in arriving at the figures reported in the Newsletter. The figure represents a reasonable, rational and fair percentage amount which can be used to determine the proportion of the individual plaintiffs' taxes which are spent for purposes to which they conscientiously object.

20. The government has an interest in maintaining a uniform, efficient and orderly method of collecting federal income taxes.

21. The Collection of such taxes by means of the withholding method is the most efficient means of collection devised by the government to accomplish the objectives set forth in finding No. 20 above.

DISCUSSION

This case is one of first impression and presents us with several difficult questions under the First Amendment of the United States Constitution dealing with the free exercise of religion.

Jurisdiction over the subject matter does exist pursuant to 28 U.S.C. § 1331(a) with respect to the individual plaintiffs Lorraine Cleveland and Leonard Cadwallader, and 28 U.S.C. § 1346(a)(1) gives us subject matter jurisdiction over the refund claim

of the AFSC. The complaint alleges that with respect to the two individual named plaintiffs, the amount involved in this particular controversy exceeds the sum of $10,000 exclusive of interest and costs.

Plaintiffs Cleveland and Cadwallader each have standing to attack the withholding method of collecting their taxes because such method of collection directly forecloses their ability to freely express their opposition to the participation in war in any form, which opposition is a vital and fundamental part of their religious practice as Quakers. Section 7421(a)[1] of the Internal Revenue Code of 1954 does not bar the suit by plaintiffs Cleveland and Cadawallader because they do not seek to restrain "the assessment or collection of any tax" but rather are contesting only the method of collection utilized by the Internal Revenue Service as it applies to the admittedly unique facts of this case. The government argues that plaintiffs Cleveland and Cadwallader are indeed attempting to enjoin the collection of a portion of their federal income taxes by means of employer withholding

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[1] Section 7421 [as amended by Section 110(c), Federal Tax Lien Act of 1966, P.L. 89-719, 80 Stat. 1125] PROHIBITION OF SUITS TO RESTRAIN ASSESSMENT OR COLLECTION.

(a) *Tax*—Except as provided in sections 6212(a) . . . , no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

and that the attack by plaintiffs on the method of collection only, rather than on the collection of the tax itself, is simply a distinction without a difference.

The government relies on Enochs v. Williams Packing Co., 370 U.S. 1 (1962) for the proposition that § 7421(a) bars a suit in this case. However, a close reading of Enochs discloses that § 7421(a) was not intended to foreclose the kind of constitutional inquiry which presently confronts this Court.

> "The manifest purpose of 7421(a) is to permit the United States to assess and collect taxes alleged to be due without judicial intervention, and to require that the legal right to the disputed sums be determined in a suit for refund." 370 U.S. at 7.

Applying this language to plaintiffs Cleveland and Cadwallader, it seems clear to us that their claim against the government in this case cannot be characterized as a suit for refund of their federal income taxes. They have not alleged that the government owes them any money and with respect to their individual claim, there is no disputed sum in existence for which a refund action would lie at the present time. The government has in fact collected all amounts of tax with interest and penalty which are due it so that we would have no power to enjoin the collection of taxes presently in dispute because none are in existence.

The clear meaning of § 7421(a) and *Enochs*, we believe, is that this Court does not have the power to enjoin the collection of taxes as long as the taxpayer has the right to sue for a refund. Here plain-

tiffs Cleveland and Cadwallader are objecting to one of several means of collection of a certain portion of their federal income taxes. They are not contesting the validity of the tax itself or the use to which the tax is put, and they are not seeking a refund of any tax alleged to be due to them.

The constitutionality *vel non* of the tax itself and the uses to which the tax monies are put are irrelevant to the question involved herein. Plaintiffs Cleveland and Cadwallader ask this Court to consider a less restrictive alternative to the withholding method of collecting a portion of their taxes so that they will be able to refuse to pay that portion of their taxes which are used for war purposes and thus fulfill the requirement of their faith that they bear witness to their peace testimony by refusing to participate in war in any form. We believe we have the power to entertain such a suit and to grant appropriate relief, if necessary.

The AFSC, however, is on a different footing. The AFSC as plaintiff employer herein is suing for a refund of taxes paid by it pursuant to 26 U.S.C. § 3403. Jurisdiction for such refund is posited on 28 U.S.C. § 1346(a)(1).

The government argues that the AFSC is not a taxpayer and therefore cannot maintain this suit for refund. It is true that only the taxpayer or someone claiming in the interest of a taxpayer may bring a suit for refund under § 1346(a)(1). See *First National Bank of Emlenton, Pa.* v. *United States*, 265 F. 2d 297 (3rd Cir. 1959). The government overlooks, however, the fact that the AFSC did not

withhold 51.6% of the taxes required to be withheld under § 3402 [2] of the Internal Revenue Code of 1954 of certain employees, but paid such amount to its employees. However, the AFSC is liable for the full payment of the tax required to be deducted and withheld regardless of whether or not it withholds the tax.[3] The problem is that the AFSC would be entitled to a refund if we find that plaintiffs Cleveland and Cadwallader are entitled to the relief which they seek because the government will have collected the tax due to it two times instead of only once. In other words, AFSC's status as a taxpayer turns on whether or not it is required to continue to withhold 51.6% of the taxes of certain of its employees pursuant to § 3403 of the Internal Revenue Code because then and only then will it be entitled to a refund for overpayment under § 6414.[4]

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[2] Sec. 3402 [as amended by Sec. 101(a), Tax Adjustment Act of 1966, P.L. 89-368, 68A Stat. 3] INCOME TAX COLLECTED AT SOURCE.

(a) *Requirement of Withholding.*—Every employer making payment of wages shall deduct and withhold upon such wages (except as otherwise provided in this section) a tax determined in accordance with the following tables. . . .

[3] See 26 U.S.C. § 3403.

[4] Sec. 6414 INCOME TAX WITHHELD.

In the case of an overpayment of tax imposed by chapter 24, or by chapter 3, refund or credit shall be made to the employer or to the withholding agent, as the case may be, only to the extent that the amount of such overpayment was not deducted and withheld by the employer or withholding agent.

It would appear that the AFSC would have standing to make a claim for a refund under § 6414 "to the extent that the amount of such over-payment was not deducted and withheld" by it. How else could such a suit be maintained in the case of an overpayment. We find that the AFSC is a "taxpayer" for purposes of § 1346(a)(1), and we therefore have jurisdiction over the subject matter with respect to it.

We come then to the question of whether or not the withholding method of collecting a certain portion of plaintiff's taxes which we have found to be used for war related purposes is unconstitutional as applied to the plaintiffs Cleveland and Cadwallader as a restriction on the free exercise of their religious beliefs as Quakers. This is indeed a unique and difficult case and one which we admit has troubled us from its inception.

The plaintiffs contend that we must test the government's method of withholding taxes by first determining whether the claimed protected activity is religiously motivated; second, whether that activity is restricted or abridged by the challenged provision; and third, if the first two requirements are met, whether there is sufficiently strong or compelling governmental interest in the use of the challenged provision that the otherwise protected activity of bearing witness by having the right to refuse to pay that portion of their taxes used by the government for war purposes may be restricted or abridged. See *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972). The gov-

ernment gives us no such help in articulating what test it would have us apply but rather asserts that Congress has the power to collect taxes to be used for the purposes of war and therefore has the power to collect such taxes by whatever means it desires.

There is no doubt in our minds that the claimed protected activity of bearing witness by refusing to pay the war taxes involved herein on the part of plaintiffs Cleveland and Cadwallader is religiously motivated. Each plaintiff has demonstrated his and her strong belief in the teachings of the Quaker religion by establishing a long history of membership in and activities related to the Quaker religion and as employees of the American Friends Service Committee. Each is conscientiously opposed to the participation in war in any form. Each objects to the withholding method of collecting 51.6% of their taxes on constitutional grounds. The government has produced no evidence which would rebut plaintiffs' showing that bearing witness is an integral part of their religious practice as Quakers, and we find that the claimed protected activity is religiously motivated within the meaning of the First Amendment.

The second question which we must consider is whether the activity of bearing witness to the participation in war in any form by refusing to pay certain war taxes has been restricted or abridged by the requirement that the AFSC withhold these taxes as any other employer would be required to do under the Internal Revenue Code. The determination of

this issue depends on how we view the process of bearing witness in the context of this case.

Quakers have for many hundreds of years taken the position that they could not engage in war or violence of any kind and could not take the life of another human being. In more recent years, this view has come to be known as the "peace testimony." The peace testimony is not a negative concept but is rather a positive idea requiring Quakers generally to strive to make war and violence unnecessary. Not all Quakers embrace the peace testimony as completely as others, and it is for each member of the faith to determine the parameters of his or her own peace testimony.

When the peace testimony of individual Quakers comes into conflict with a governmental requirement, the first step usually taken is to petition the government to change its position. Quakers worked out such a change and compromise with respect to alternative service during World War I and thereafter. If such a compromise cannot be worked out then the individual must re-examine his or her conscience to determine if it is possible to live with the government's requirement or if not, then to disobey the law so as not to violate conscience.

As applied to this case, plaintiffs Cleveland and Cadwallader argue that their consciences are being violated by their inability to refuse to pay a certain portion of their taxes for war related purposes even though they know that ultimately they will be required to pay the full amount they owe. However,

they feel and argue that they have a responsibility to themselves which is religiously motivated to refuse to pay such taxes because it violates their beliefs—their peace testimony.

We are of the opinion that the withholding method of collection of taxes does foreclose plaintiffs' ability to freely exercise that part of their beliefs requiring them to refuse to participate in war in any form with respect to the payment of war taxes. The tax which is withheld is in fact a tax on their incomes which means that the support of whichever war we happen to be engaged in is coming out of their pockets. The "support of war" also includes the payment of taxes in time of "peace" so long as those taxes are used to support the military's defense budget generally. Quakers make no distinction between an offensive or a defensive war. Both are equally objectionable.

The final and most important question to be determined is whether or not the government's interest in the use of the withholding method of collecting taxes is so great and compelling as to outweigh the religious interests which the plaintiffs seek to protect. Over the years, the Supreme Court of the United States has placed a heavy burden on the government to establish which compelling state interests are at stake so that the balance may be struck between individual First Amendment rights and compelling, legitimate state interests. See *Sherbert* v. *Verner*, 374 U.S. 398 (1963). This burden must be met by a presentation of evidence upon which we can make

certain findings of fact to support whatever balance is struck.

It appears obvious to us that the government has an interest in maintaining a uniform, efficient and orderly system of collecting federal income taxes in the United States. The withholding provisions of the Internal Revenue Code would appear to be an integral part of the maintenance of this uniform and orderly system of collection. We will further take judicial notice of the fact that the great majority of federal income taxes are withheld at their source pursuant to the requirements of 26 U.S.C. § 3402. We must balance the possible disruption to this system of collection against the individual rights of these two plaintiffs to engage in the free exercise of their religion. Additionally, the government did show that the interest and penalty assessed against small amounts of tax deficiencies would not cover the cost to the Internal Revenue Service of collecting the tax through the levy process.

The plaintiffs on the other hand have shown that since 1970, the Internal Revenue Service has received by way of the levy process, every tax dollar to which it is entitled despite the fact that the AFSC has not withheld 51.6% of the federal income tax of plaintiffs Cleveland and Cadwallader required by the statute. At this point in time, we must acknowledge the fact that the government and the plaintiffs Cleveland and Cadwallader and AFSC have been quite successful in working out a difficult confrontation of ideology without causing any substantial dislocations

or burdens to befall the government. The additional cost of collection in certain instances is the only specific additional burden placed on the government.

We further note that if plaintiffs Cleveland and Cadwallader were self-employed, they would not be in Court seeking the relief requested because they would not be subject to the withholding requirements of the Internal Revenue Code. The Internal Revenue Service would then be forced to deal with them as it must deal with any self-employed person who has refused to pay his or her income taxes. Consequently, we do not feel that we are creating a new problem for the Internal Revenue Service which will necessitate its having to devise a new procedure for collecting the tax to which it is entitled. As we noted above, the Service has been levying on plaintiffs' property since 1970 and has received all monies cursently due it by that process.

We believe that the government has failed to establish that its interest in the use of the withholding method of collecting taxes is so great and compelling that it outweighs the religious interests which the plaintiffs seek to protect in this case. The additional cost of collection, if any, is a small price to pay when compared with the possible frustration of the religious practice of bearing witness to one's conscience which practice has sought the aegis of the First Amendment in the unique context of this case.

In *Sherbert* v. *Verner*, 374 U.S. 398 (1963), the Supreme Court held

> ". . . that no showing merely of a rational relationship to some colorable state interest would suffice; in this highly sensitive constitutional area, '[o]nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation.'" 374 U.S. at 406

The balancing of the interests apparent on each side is a difficult task in all but the clearest of cases. The *Sherbert* test set forth above and as applied to this case requires a showing by the government that a decision protecting the religious activity in question would be likely to result in placing a substantial burden on the ability of the Internal Revenue Service to collect the tax revenues to which it is entitled. We do not believe that the government has established the likelihood of such a burden based on the record before us, and we therefore hold that the withholding method of collecting the federal income taxes of plaintiffs Cleveland and Cadwallader violates their First Amendment rights to the free exercise of their religion.

We note that the fact that the plaintiff employees are working for a plaintiff employer which also shares their beliefs and is willing to accommodate them in this situation is one factor which leads us to the result herein. The employer AFSC will be as much affected by this decision as the employees and its willingness to compute and not withhold the tax involved herein plus its history of complete candor in its dealings with the Internal Revenue Service insure that the government will get every tax dollar to which it is entitled.

Because we hold that the means of collecting plaintiffs' taxes by withholding them at the source restricts the free exercise of their religion by foreclosing a means by which they may bear witness to their opposition to the participation in war in any form which opposition is a fundamental part of their religious teaching as Quakers, the AFSC is likewise exempt from withholding 51.6% of the taxes of plaintiffs Cleveland and Cadwallader. Further, the AFSC is entitled to a refund of $574.09 which represents the sum of amounts not withheld from plaintiffs Cleveland and Cadwallader and several other employees not plaintiffs herein. AFSC is entitled to the refund because the government has at present received two times the amount of the tax to which they are entitled. It would be little comfort to the plaintiffs herein if we were to hold that the withholding requirements indeed abridge the free exercise of their religion without permitting the employer AFSC the right to a refund. Our holding today in no way affects the operation of 26 U.S.C. § 3403. We have not been asked to exempt the American Friends Service Committee from the operation of that statute and we will not do so. Also, we do not hold that the AFSC may cease to withhold taxes from other employees who are not plaintiffs herein. The AFSC may seek to exempt future employees by first seeking such exemption from the Internal Revenue Service and finally the Court, if necessary. This is not a class action, and we are powerless to extend the hold-

ing beyond the named plaintiffs who have actually participated in this suit.

Any statements of fact or law found in this Court's discussions regarding liability or damages which have not been specifically enumerated in the sections entitled "Findings of Fact" and "Conclusions of Law" respectively, are hereby designated "Supplemental Findings of Fact and Conclusions of Law."

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and the subject matter pursuant to 28 U.S.C. § 1331 (a) and § 1346(a)(1).

2. The plaintiffs Lorraine Cleveland and Leonard Cadwallader have standing to raise the constitutionality of the withholding provisions of the Internal Revenue Code as they apply to their particular situation.

3. The plaintiff AFSC has standing to sue for a refund under 28 U.S.C. § 1346(a)(1).

4. Section 26 U.S.C. § 7421(a) of the Internal Revenue Code is not a bar to this action.

5. Section 26 U.S.C. § 3402 is unconstitutional as applied to the facts of this case in that it operates as an abridgment to the free exercise of the religion of plaintiffs Lorraine Cleveland and Leonard Cadwallader.

6. The defendant United States of America will be enjoined from collecting 51.6% of the federal income taxes of plaintiffs Lorraine Cleveland and Leo-

nard Cadwallader by requiring such taxes to be withheld at the source because such withholding violates the free exercise of their religion as members of the Society of Friends.

7. The defendant United States of America is liable for the refund of $574.09 which represent amounts not withheld from plaintiffs Cleveland and Cadwallader and certain other employees not plaintiffs to this action. Such amounts represent an overpayment of taxes not withheld under § 6414 of the Internal Revenue Code.

APPENDIX B

ORDER

AND NOW, to wit, this 31st day of December, 1973, it is hereby Ordered that the defendant United States of America is enjoined from further collection of 51.6% of the federal income taxes of plaintiff Lorraine Cleveland and plaintiff Leonard Cadwallader by use of the withholding method of collecting said taxes from said plaintiffs' employer American Friends Service Committee.

It is further Ordered that the plaintiff American Friends Service Committee cease withholding 51.6% of the federal income tax of plaintiff Lorraine Cleveland and plaintiff Leonard Cadwallader.

It is further Ordered that judgment be entered in favor of plaintiff American Friends Service Committee and against the defendant United States of America in the amount of $574.09.

It is further Ordered that all plaintiffs are awarded their costs respectively.

IT IS SO ORDERED.

/s/ Clarence C. Newcomer
CLARENCE C. NEWCOMER, J.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 70-1405

AMERICAN FRIENDS SERVICE COMMITTEE, LORRAINE CLEVELAND and LEONARD CADWALLADER, PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

NOTICE OF APPEAL

Notice is hereby given that pursuant to 28 U.S.C. § 1252, defendant, United States of America, appeals to the United States Supreme Court from the final judgment entered in this action on the 31st day of December, 1973.

January 30, 1974.

ROBERT E. J. CURRAN
United States Attorney
Attorney for Defendant

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